

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

JASMINE SANCHEZ,

Plaintiff,

v.

CRAIG S. DENNEY,

Defendant.

Case No. 3:23-CV-00052-MMD-CLB

**REPORT AND RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE<sup>1</sup>**

Plaintiff Jasmine Paul Sanchez ("Sanchez"), who is incarcerated in the custody of the Nevada Department of Corrections at Ely State Prison, is a prisoner proceeding *pro se*. (ECF No. 1-1.) On February 8, 2023, this Court denied Sanchez's application to proceed *in forma pauperis* because he has three strikes under 28 U.S.C. § 1915(g) and failed to demonstrate that he was under imminent danger of serious physical injury. (ECF No. 5.) The Court gave Sanchez 30 days to pay the full \$402 filing fee. (*Id.* at 2.) The Court expressly warned Sanchez that "this action will be dismissed without prejudice" unless he timely paid the filing fee. (*Id.*) The deadline has passed, and Sanchez has not paid the filing fee.

**I. DISCUSSION**

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th

---

<sup>1</sup> This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to  
2 dismiss an action on one of these grounds, the Court must consider: (1) the public's  
3 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;  
4 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
5 cases on their merits; and (5) the availability of less drastic alternatives. See *In re*  
6 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
7 *Malone*, 833 F.2d at 130).

8 The first two factors, the public's interest in expeditiously resolving this litigation  
9 and the Court's interest in managing its docket, weigh in favor of dismissing Sanchez's  
10 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal  
11 because a presumption of injury arises from the occurrence of unreasonable delay in filing  
12 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542  
13 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of  
14 cases on their merits—is greatly outweighed by the factors favoring dismissal.

15 The fifth factor requires the Court to consider whether less drastic alternatives can  
16 be used to correct the party's failure that brought about the Court's need to consider  
17 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining  
18 that considering less drastic alternatives before the party has disobeyed a court order  
19 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th  
20 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that  
21 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's  
22 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled  
23 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).  
24 Courts “need not exhaust every sanction short of dismissal before finally dismissing a  
25 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779  
26 F.2d 1421, 1424 (9th Cir. 1986).

27 Because the Court cannot operate without collecting reasonable fees, and litigation  
28 cannot progress without a plaintiff's compliance with court orders, the only alternative is

1 to enter a second order setting another deadline. But issuing a second order will only  
2 delay the inevitable and further squander the Court's finite resources. Setting another  
3 deadline is not a meaningful alternative given these circumstances. So the fifth factor  
4 favors dismissal. In sum, having thoroughly considered these dismissal factors, the Court  
5 finds that they weigh in favor of dismissal. It is therefore recommended that this action be  
6 dismissed without prejudice based on Sanchez's failure to pay the full filing fee in  
7 compliance with this Court's February 8, 2023 Order (ECF No. 5).

8 The parties are advised:

9 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of  
10 Practice, the parties may file specific written objections to this Report and  
11 Recommendation within fourteen days of receipt. These objections should be entitled  
12 "Objections to Magistrate Judge's Report and Recommendation" and should be  
13 accompanied by points and authorities for consideration by the District Court.

14 2. This Report and Recommendation is not an appealable order and any  
15 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the  
16 District Court's judgment.

17 **II. RECOMMENDATION**

18 **IT IS THEREFORE RECOMMENDED** that this action be **DISMISSED** without  
19 prejudice based on Sanchez's failure to pay the full filing fee in compliance with this  
20 Court's February 8, 2023 Order (ECF No. 5); and,

21 **IT IS FURTHER RECOMMENDED** that the Clerk of Court **ENTER JUDGMENT**  
22 accordingly and **CLOSE** this case.

23 **DATED:** March 15, 2023.

24   
25 **UNITED STATES MAGISTRATE JUDGE**  
26  
27  
28